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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,955	09/10/2003	Allen R. Brzoska	BRZOSKA	3514
7723	7590	09/28/2005	EXAMINER	
PHILIP L BATEMAN P O BOX 1105 DECATUR, IL 62525			BALSIS, SHAY L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/658,955	Applicant(s) BRZOSKA, ALLEN R.	
	Examiner Shay L. Balsis	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/10/03</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to an apparatus, classified in class 15, subclass 235.4.
- II. Claims 6-10, drawn to method of using the apparatus, classified in class 427, subclass 356.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product claimed can be used in a materially different process.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Philip Bateman on 6/3/05 a provisional election was made without traverse to prosecute the invention of group I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-10 are withdrawn

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from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaston (USPN 3611470).

With regards to claim 1, Gaston teaches an adhesive spreader for applying an adhesive to a substrate comprising a top plate (4) with a leading edge, a trailing edge, an upper surface and a lower surface. There is notched plate (14) having a top edge, a bottom edge and two sides. The top edge is connected along and descending from the trailing edge of the top plate. The bottom edge comprises a plurality of notches (13). The width of the notched plate defines a contact section on the substrate. There is a handle (21) connected to the upper surface of the top plate. There is a descending member (24) having a top and a bottom wherein the top of the descending member is connected to the lower surface of the top plate. The bottom of the descending member is centrally located below the top plate. With regards to claim 2, the notched member has a length such that the notched plate forms an angle to the substrate of about 45 to 90 degrees. With regards to claim 3, the notched plate forms an angle to the top plate of about 90 to 135 degrees (bottom surface of top plate to bottom surface of notched plate).

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Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Holliday et al. (USPN 6243906).

With regards to claim 1, Holliday teaches a scraper that is capable of applying an adhesive to a substrate comprising a top plate (not labeled but best shown on figure 2 by reference number 20) with a leading edge, a trailing edge, an upper surface and a lower surface. There is notched plate (30) having a top edge, a bottom edge and two sides. The top edge is connected along and descending from the trailing edge of the top plate. The bottom edge comprises a plurality of notches (40a, 40b, 40c). The width of the notched plate defines a contact section on the substrate. There is a handle (14) connected to the upper surface of the top plate. There is a descending member (24) having a top and a bottom wherein the top of the descending member is connected to the lower surface of the top plate. The bottom of the descending member is centrally located below the top plate. With regards to claim 2, the notched member has a length such that the notched plate forms an angle to the substrate of about 45 to 90 degrees. With regards to claim 3, the notched plate forms an angle to the top plate of about 90 to 135 degrees (bottom surface of top plate to bottom surface of notched plate).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Giustino (USPN 3366987).

With regards to claim 1, Giustino teaches a scraper capable of applying an adhesive to a substrate comprising a top plate (18) with a leading edge, a trailing edge, an upper surface and a lower surface. There is notched plate (20) having a top edge, a bottom edge and two sides. The top edge is connected along and descending from the trailing edge of the top plate. The bottom edge comprises a plurality of notches (22). The width of the notched plate defines a contact

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section on the substrate. There is a handle (11) connected to the upper surface of the top plate. There is a descending member (13) having a top and a bottom wherein the top of the descending member is connected to the lower surface of the top plate. The bottom of the descending member is centrally located below the top plate. The descending member is capable of contacting the adhesive at the same time of the notched plate since the adhesive could be piled up underneath the top plate. With regards to claim 2, the notched member has a length such that the notched plate forms an angle to the substrate of about 45 to 90 degrees. With regards to claim 3, the notched plate forms an angle to the top plate of about 90 to 135 degrees (bottom surface of top plate to bottom surface of notched plate). With regards to claim 4, the descending member is connected to the lower surface of the top plate directly below the handle (figure 4). With regards to claim 5, the bottom of the descending member is rounded (figure 4).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sourek (USPN 1008382).

With regards to claim 1, Sourek teaches a scraper capable of applying an adhesive to a substrate comprising a top plate (1) with a leading edge, a trailing edge, an upper surface and a lower surface. There is notched plate (4) having a top edge, a bottom edge and two sides. The top edge is connected along and descending from the trailing edge of the top plate. The bottom edge comprises a plurality of notches (6). The width of the notched plate defines a contact section on the substrate. There is a handle (9) connected to the upper surface of the top plate. There is a descending member (5) having a top and a bottom wherein the top of the descending member is connected to the lower surface of the top plate. The bottom of the descending member is centrally located below the top plate. With regards to claim 2, the notched member

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has a length such that the notched plate forms an angle to the substrate of about 45 to 90 degrees.

With regards to claim 3, the notched plate forms an angle to the top plate of about 90 to 135 degrees. With regards to claim 4, the descending member is connected to the lower surface of the top plate directly below the handle (figure 3). With regards to claim 5, the bottom of the descending member is rounded at the tip (figure 4).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb  
9/22/05



MARK SPISICH  
PRIMARY EXAMINER  
GROUP 3400

1700